

The Covid 19 Pandemic as a Strain in Increasing Domestic Violence (An Overview of Restorative Justice in Sustainable Crime)

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ABSTRACT

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The COVID-19 pandemic has become a global pandemic that has changed the order of human life in almost all parts of the world. Indonesia is also one of the countries affected by the Covid-19 pandemic. The Indonesian government has established public policies to prevent the spread of the COVID-19 virus, one of which is the policy on limiting community activities by diverting work to be done from home (Work from Home). The pandemic condition has an impact on increasing cases of domestic violence. Various factors can cause domestic violence during the pandemic, the main one is the economic factor. This study aims discusses the Covid-19 pandemic as a "strain" that triggers domestic violence, the state's response to domestic violence, and restorative justice in resolving domestic violence. This research is a normative juridical research that examines the problems of various legal theories. The study was conducted on the prospect of restorative justice in resolving cases of domestic violence as sustainable violence. The analysis was carried out qualitatively. Domestic violence that occurred during the pandemic was caused by "strain" including a decrease to loss of income, boredom from having to be at home, sick conditions and so on. The increasing number of domestic violence cases during the pandemic requires handling using the principle of restorative justice with a penal mediation mode. This problem solving model is carried out by bringing together perpetrators and victims and finding a middle way to solve the problems they face. This out-of-court settlement is believed to be more effective considering that the perpetrator and the victim have an inner relationship based on love that prioritizes the integrity of the household. Restorative justice with penal mediation does not yet have regulators and categories in criminal law, including Law Number 23 of 2004 concerning the Elimination of Domestic Violence, within the limits or levels of violence whose resolution can be carried out using the concept of restorative justice

1. INTRODUCTION

The Covid-19 virus that originated in Wuhan city of China caused a global pandemic. All countries have started to impose lockdowns in their respective regions because the cases of Covid-19 have increased very quickly and even the deaths caused by this virus are increasing. This Covid-19 virus can infect anyone, no matter what the condition of that person, whether he is rich, poor, healthy, young, or old, at any gender.¹ This pandemic that has been going on since December 2019 is not only a health problem, but also has a systemic impact on human life. Alex R. Piquero, et al. state “Incidents of domestic violence increased in response to stay-at-home/lockdown orders, a finding that is based on several studies from different cities, states, and several countries around the world.”²

The impact of the Covid-19 pandemic that is the most felt is that there have been being many layoffs, so that the economy of the families has been experiencing shocks with no income to finance their daily lives. Loss of income triggers stress and causes emotional overload on the breadwinner that can lead to physical violence and even divorce. The Ministry of Manpower conducted a survey on 21 Manpower Offices from 34 provinces in Indonesia using a quantitative method through the provision of questionnaires. The results of the survey in November 2021 note that 72,983 employees had become victims of layoffs due to the Covid-19 pandemic.³ As many as 80 percent of female respondents in the income group below IDR 5 million per month said that the violence experienced tends to increase during the pandemic. In general, the survey results note that psychological and economic violence dominates domestic violence. The results of the online survey also identify that the vulnerability to workloads doubled and violence against women.⁴

In 2020, *Komnas Perempuan's* Annual Record stated that there were 299,911 cases of violence against women, with cases of 'Domestic Violence' occupying the position of the most cases, amounting to 79%.⁵ The increase in the number of domestic violence cases during the Covid-19 pandemic correlates with the number of divorce cases. Based on data from the Denpasar Population and Civil Registry Office, during the pandemic there is an increase in divorce in Denpasar City. From January to July 2021 there were 302 divorce certificates issued. Previously, it was recorded that in 2019 there

¹ Maisandra Helena; & Aguz Machfid Fauzi Lohy, “Peningkatan Kekerasan Dalam Rumah Tangga (KDRT) Selama Pandemi COVID-19 Dalam Kacamata Sosiologi Hukum,” *Res Judicata* 4, no. 1 (2021).

² et al. Piquero, Alex R., “Evidence from a Systematic Review and Meta-Analysis: Domestic Violence during the COVID-19 Pandemic,” *Journal of Criminal Justice*, 2021.

³ Dwi Aditya Putra, “Kemnaker: 72.983 Pekerja Kena PHK Selama Pandemi Covid-19,” 2021.

⁴ Kompas, “KDRT Meningkat Selama Pandemi, Ini Bantuan & Strategi Dari Komnas Perempuan Serta Kementerian PPPA,” 2021.

⁵ T. Tantimin, “Victim Blaming Korban Kekerasan Domestik Di Masa Pandemi Covid 19: Viktimologi,” *Gorontalo Law Review* 2, no. 2 (2021).

were 359 divorces and in 2020 there were 442 divorces. The cause of divorce is due to domestic violence and there are also those who feel that they are not compatible with their partners.⁶ The Gianyar District Court recorded 199 divorce cases in 2019, while in 2020 there was an increase of 51 cases. The number of lawsuits in 2020 is higher than 2019.⁷

Domestic violence is a problem that has taken root and occurred almost all over the world. Therefore, the international community views the problem of domestic violence as a problem that requires special attention and handling. In international human rights conventions, it has even been regulated where victims of domestic violence can sue their country due to the weak protection of victims of domestic violence. International conventions governing this matter are contained in the Universal Declaration of Human Rights (“UDHR”), the International Covenant on Civil and Political Rights (“ICCPR”), and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) which become a common standard regarding human rights, where victims of domestic violence can sue their respective countries.⁸ Domestic violence according to the Law on the Elimination of Domestic Violence Number 23 of 2004 is any act against a person, especially a woman, which results in misery, physical, psychological suffering, and/or neglect of the household, including acts of threats by force, or acts of who robs freedom against the law occurring in the household environment.

The occurrence of cases of domestic violence may not occur once like other crimes. This violence will occur continuously. William G. Doerner Steven P. Lab points out one very interesting point, namely, “People who love each other can be intensely violent.”⁹ The continuation of the violence is due to the choices of the victims themselves. This cannot be separated from the causal factors and the relationship between the perpetrator and the victim. Factors causing domestic violence can be divided into several factors, namely: individual factors such as perpetrators who were victims of domestic violence, victims of child neglect, psychological deviations, alcoholics, gamblers and narcotics users; family factors, such as the result of poor parenting, frequent conflicts in the household, victims of parental divorce and low social and economic status; community factors such as being in an environment of poverty, high crime and unemployment; social environmental factors, one of which is the result of the COVID-19 pandemic in which there are high changes in the social environment, the application of quarantine, restrictions on community activities that cause stress and depression, the decline in the economy which results in vulnerable conflicts in the household.

⁶ Kumparan, “Tingkat Perceraian Di Denpasar Meningkat Sejak Pandemi COVID-19,” 2021.

⁷ Merdeka, “Selama Pandemi 2020, Gugatan Perceraian Di PN Gianyar Bali Meningkat,” 2021.

⁸ Nur Asiah & Dahlia Kusuma Dewi Syahrin, Alvi, “Pengembangan Protokol Perlindungan Hukum Pada Korban KDRT Di Masa Pandemi Covid 19 Dalam Meningkatkan Kualiatas Hidup Wanita,” n.d.

⁹ W.G.; & Steven P.L. Doerner, *Victimology Sixth Edition* (Elsevier: Burlington, 2012).

The relationship between the perpetrator and the victim will cause this crime to be neatly covered. As a result, violence will occur continuously. Considering the relationship between the perpetrator and the victim, if there is a case of violence that is resolved through the criminal justice system, the judge begins to consider applying the concept of restorative justice with the penal mediation method. In the application of the law, the judge acts as a mediator by using the method of mediation and dialogue between the perpetrator and the victim, especially for criminal acts that are categorized as complaints offenses and minor crimes. This study discusses the Covid-19 pandemic as a "strain" that triggers domestic violence, the state's response to domestic violence, and restorative justice in resolving domestic violence.

2. RESEARCH METHOD

The research method used in this research is the normative juridical method or normative legal research. By using a narrative review approach, the articles are obtained from searching on Google Scholar and Pubmed.¹⁰ The articles used are national and international journals with full text, and have conformity to the content and objectives of this study. The qualitative methods are used in examining social phenomena that occur in the community regarding the increase in acts of domestic violence during the Covid-19 pandemic. Data collection is carried out using a literature approach and collecting data is from e-journals, books, and websites. The data obtained is then analyzed descriptively to obtain conclusions from the research conducted.

3. RESULTS AND DISCUSSION

3.1. The Covid-19 Pandemic As a "Strain" That Triggers Domestic Violence

The Covid 19 pandemic is a non-natural disaster as stipulated in Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Coronavirus Disease (Covid-19). This pandemic is an unavoidable reality. Many people do not have any preparation to face the pandemic; therefore, there is panic in society. The community is required to adapt to the new habits in order to continue their activities by implementing the health protocols determined by the government to prevent the spread of the pandemic. During the pandemic, the government imposes restrictions on community activities, in which people are directed to stay at home and carry out their activities from home, including work, known as Work from Home (WFH). For some people, working from home is considered to be a good moment to bring family relationships closer. However, this is the opposite, especially for workers who rely on daily income, such as casual daily laborers, motorcycle taxi drivers and other daily

¹⁰ D. Rahmayani; & I. R. Fitriani Fazraningtyas, W. A., "Kejadian Kekerasan Pada Perempuan Selama Masa Pandemi COVID-19," *Dinamika Kesehatan: Jurnal Kebidanan Dan Keperawatan* 11, no. 1 (2020).

workers. Too frequent interactions between husband and wife within the scope of the household, especially with the difficult economic pressure during the pandemic, trigger conflicts and problems in the household.

In cases of domestic violence, the tendency is for women or wives to be the victims, although it is possible that women can also act as perpetrators and men as victims. The tendency of women as victims of domestic violence is once again influenced by the patriarchal system, where men hold real power both in government policies and in community behavior.¹¹ In principle, anticipating the occurrence of domestic violence, especially in a pandemic situation, requires self-awareness, mutual understanding and maintaining communication between family members.

The impact that is the most felt due to the Covid-19 pandemic on the economic aspect is the chaos in the economic rotation. There is the occurrence of large-scale closures both temporary and permanent in certain business fields. There are layoffs which automatically increases the unemployment rate. This triggers pressure that causes excessive emotions from the breadwinners which lead to physical violence, and those closest to them are the ones who are vulnerable to this vent. The Covid-19 pandemic has suddenly changed the order of life and habits in society, including in the household. Before pandemic, husband and wife had less intensity of meetings due to work, and household economic stability. As a result of the pandemic, the intensity of the meeting between husband and wife is getting bigger. Moreover, the economic conditions are not good due to the termination of the working relationship of the husband as the head of the household. This results in frequent conflicts and quarrels between husband and wife. This condition can be analyzed from the stress during the Covid-19 pandemic.

The stress that has implications for violence is widely discussed in General Strain Theory as stated by Agnew. Larry J. Siegel analyzed Agnew's thinking and later wrote, "Agnew suggests that criminality is the direct result of negative affective states—the anger and frustration that emerge in the wake of destructive social relationships. He finds that negative affective states are produced by a variety of sources of strain."¹² During the pandemic, the necessities of life still must be met, increasing health costs, education costs and additional educational facilities such as cellphones and internet needed by children for distance learning. This is inversely proportional to the economic condition of the breadwinner, problems in the household that should be communicated well between husband and wife. When the communication does not occur properly, it will be very vulnerable to acts of domestic violence.¹³ When there is conflict in the household, the tendency to become victims of domestic violence is the wife/woman. Violence against

¹¹ H. N. Umar, *Ketika Fikih Membela Perempuan* (Jakarta: Elex Media Komputindo, 2014).

¹² Larry J. Siegel, *Fourth Edition Criminology The Core* (Wadsworth: Belmont, 2011).

¹³ R. O. Rasubala Rasubala, "Kajian Yuridis Kriminologi Mengenai Tindak Kekerasan Dalam Rumah Tangga Selama Situasi Pandemi Covid-19," *LEX CRIMEN* 10, no. 10 (2021).

women is said to be gender-based violence. Violence perpetrated by a husband against his wife in the household, in the culture of some people is considered as a normal thing. The domestic violence is a form of crime committed within the household.¹⁴

The Advocates for Human Rights defined domestic violence as a pattern of abusive or threatening behaviours that may include physical, emotional, economic and sexual violence as well as intimidations and isolations among others.¹⁵ Violence is generally perpetrated against women classified into several forms, namely physical violence, sexual violence, psychological violence, economic violence, including deprivation of liberty. Physical violence is any act that causes pain to the victim due to injuries, defects in body parts can even cause death. Sexual violence is any act that includes sexual harassment to the point of forcing someone to have sexual intercourse without the victim's consent or when the victim does not want it; and or engage in sexual intercourse in ways that are unnatural or unwelcome to the victim; and or keep (isolate) the sexual needs away. Psychological violence can be in the form of words or actions that result in fear, loss of confidence, loss of ability to act and a sense of helplessness in the victim. Economic violence is a form of violence carried out by limiting the rights of a person, especially women, to work outside the home, which often occurs in patrilineal societies. However, it can also happen the other way around where the victim experiences economic exploitation so that the victim has to abandon his family. Arbitrary deprivation of liberty is an act that causes a person to be isolated from his social environment.

Domestic violence covers a broad range of outcomes – including psychological harm, deprivation and maldevelopment. This reflects a growing recognition among researchers and practitioners of the need to include domestic violence that does not necessarily result in injury or death, but that nonetheless poses a substantial burden of hurt or insult to women's physical and psychological health.¹⁶ Domestic violence against women can cause reproductive health problems like menstrual disorders such as menorrhagia, hypomenorrhagia or metrorrhagia, even these women can experience menopause early, experience decreased libido, and the inability to get an orgasm as a result of the violence they experience.¹⁷

The impact of violence on women victims in the domestic violence can be in the form of physical attacks such as cuts, injuries, bruises on the face or body parts. These attacks can lead to illness, infection, disability, chronic headaches, irregular eating and

¹⁴ S. Syufri, "Perspektif Sosiologi Tentang Kekerasan Terhadap Perempuan Dalam Rumah Tangga," *Jurnal ACADEMICA FISIP UNTAD* 1 (2009).

¹⁵ & A.N. Chibuzo Okey-Orji, S., G.O. Ekenedo, "Life Skills Acquisition: A Panacea for Domestic Violence Among Adolescents in Nigeria," *Academic Research International* 10, no. 3 (2019).

¹⁶ I. Abdul-Fadl, A. MA; Fahmy, E.M.; & EL-Kerdany, "Birth Spacing and Domestic Violence: Outcome on Women and Child Health," *MCFC-Egyptian Journal of Breastfeeding (EJB)* 16 (2019).

¹⁷ E. Sutrisminah, "Dampak Kekerasan Pada Istri Dalam Rumah Tangga Terhadap Kesehatan Reproduksi," *Majalah Ilmiah Sultan Agung* 50, no. 127 (2022).

sleeping, alcohol and drug abuse. Victims can experience trauma, stress, feelings of helplessness, depression, Post-traumatic Stress Disorder (PTSD), suicidal thoughts, behavior and attempts, anxiety, fear, anger, shame, insecurity, blame and self-loathing. The occurrence of domestic violence causes limited movement and association, hampered access to sources of information and resources, blamed by family and environment, rejection of husband/family, ostracized from the community, received, even victims get social stigma. Domestic violence can be in the form of economic violence that results in being unable to work, losing a job (due to violence, trauma, injury, time needed to seek help/safety/legal assistance), losing opportunities to excel at work, some women quitting their jobs due to workplace violence (sexual harassment).¹⁸

Domestic violence is a continuing crime. This condition is created, both because of the legal system and the victim factor itself. The legal system is one of the causes of the ongoing violence. Law enforcement officers are not yet gender sensitive; therefore, there are indications that they are blaming the victim and not the perpetrator. There are also conditions where the victim is unable to take his case to court because of the cost, the long process, not understanding the law and no one to help. The legal system does not take the case seriously, and the legal process makes the victim traumatized again. The continuation of domestic violence is also caused by the helpless victims. They feel insecure, threatened, afraid, unprotected, the risk of violence continues, the security forces/police do not take their complaints seriously.¹⁹

The helplessness of the victim is influenced by the unsettled economic condition of women. In many household conditions, women stop working when they become a wife or a mother. As a result, women's lives depend on their husbands. Reporting a husband who is abusive will cause the family lose the breadwinner and cause the child has a father imprisoned. This condition will weaken women's struggle to escape the violence. Furthermore, Siswanto Sunarso states that the omission of victims is carried out for several reasons, namely the inability of the community to react to the deviations that occurred, the fear of social control organization or victims of irregularities about the possibility of conflicting consequences and this indifference/omission is a social climate caused by there are no widespread reactions to inappropriate behavior.²⁰

3.2. The State's Response to Domestic Violence

The struggle for women cannot be separated from the feminists who see inequality between men and women. Feminism theory is motivated by the idea that the majority of the legal order is built on a biased worldview in which the law is constructed in the male

¹⁸ I. Kumala Arifiyana, "Dampak KDRT Terhadap Keutuhan Rumah Tangga Di Desa Pucung Kecamatan Tirto Kabupaten Pekalongan" (IAIN Pekalongan, 2018).

¹⁹ Arifiyana.

²⁰ Siswanto Sunarso, *Viktimologi Dalam Sistem Peradilan Pidana* (Jakarta: Sinar Grafika, 2012).

logic. Women are constructed to be in a lower position than men. This view has received resistance from the adherents of Legal Feminism theory. The resistance is shown by Gramsci, the increasing of ideological awareness. The use of this route is important, because women have been imprisoned in the ideology of male primacy. They are in a false consciousness about the reality of the world (which favors men), as if that reality is normal, natural and unchangeable. As long as women are still trapped in a false consciousness and do not have awareness of the world they live in, gender discrimination and marginalization will continue to be maintained.²¹ The struggle of feminists is carried out with the struggle for gender equality at the level of legislation.

The enactment of Law Number 23 of 2004 led to the emergence of reports of acts of domestic violence which are increasingly being exposed and documented. Prior to the enactment of Law Number 23 of 2004, criminal acts that led to domestic violence were associated with the Criminal Code, Law Number 1 of 1974 concerning Marriage, Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, and Law Number 39 of 1999 concerning Human Rights.

The struggle for the rights of victims of domestic violence, one of which relies on the role of the state to regulate and protect the rights of victims. Mawby and Walklate said that the theory of critical victimology is not only focused on the reality of the victim's life. Mawby and Walklate further argue that an analysis of the 'recursive relationship between institutions and structures' is necessary to understand how historical, cultural and socio-economic processes, as well as the power of states, 'support certain individual actions at certain times. It further said that victims have the potential 'to maintain and change the conditions in which they act'. One of the central ways to achieve this change is through the advocacy of the victims' movement for the recognition of victims' rights.²²

Coping with family violence during a pandemic is more difficult than in a normal situation without a pandemic. There are several things that can be done to deal with domestic violence during a pandemic, including handling through yourself and through institutions. Handling through oneself, when there is a conflict in the household, self-control is needed so that the parties can calm down and the conflict does not become big and together can reduce the conflict that occurs. If in a conflict situation, the parties' self-control is lack, the conflict will become large and may result in physical, psychological or sexual violence, and even death. Handling through the help of other people, victims of domestic violence based on article 10 of Law Number 23 of 2004 have the right to get assistance in handling and protecting from acts of domestic violence from the family,

²¹ Yoan N. Simanjuntak dan Markus Y. Hage Tanya, Bernard L., *Teori Hukum Strategi Tertib Manusia Lintas Ruang Dan Generasi* (Yogyakarta: Genta Publishing, 2010).

²² Neil Olley and David Denham Wolhunter, Lorraine, *Victimology: Victimisation and Victims' Rights* (New York: Routledge-Cavendish, 2009).

police, prosecutors, courts, advocates, social institutions, or other parties based on government stipulations such as medical health services, special handling related to the confidentiality of victims, assistance by social workers, legal assistance and spiritual guidance services.²³

The role of the police can be seen in Articles 16 to 20 of Law Number 23 of 2004. Victims of domestic violence can report to the police. The steps for handling domestic violence by the police are carried out by providing temporary protection to the victim, requesting a letter of protection from the court and conducting an investigation.²⁴ In handling and providing protection to victims of domestic violence as mandated by the advocate profession, an advocate is obliged to: provide legal consultation which includes information on victims' rights and the judicial process, provide assistance to victims at every level of the process starting from police reports to court, advocates can coordinate with fellow law enforcers, companion volunteers, and social workers so that the justice system can run as it should.²⁵ The judiciary will only carry out its role after receiving a delegation from the prosecutor's office based on the results of an investigation from the police.²⁶ Cases of domestic violence involve the role of health workers, the role of social workers and companion volunteers and the role of spiritual mentors.

Health workers have a role in handling victims of domestic violence by conducting a medical examination of the victim, carrying out a post-mortem which is then followed up by a post-mortem (*visum et repertum*) report or medical certificate that can be used as evidence.²⁷ The role of social workers and companion volunteers is to handle victims of domestic violence, social workers including companion volunteers act as companions who provide reinforcement to victims both psychologically and physically, as well as provide counseling.²⁸ Victims of domestic violence generally experience pressure both psychologically and physically because those who commit violence are the closest people who are supposed to protect and give love to the victim. In such circumstances, the victims will experience shocks so that they become traumatized, including leading to actions to hurt themselves such as the desire to commit suicide. To deal with this, a spiritual companion is needed who can provide faith strengthening to the victim.

²³ M. Humm and & D. G. Arivia, "Mengapa Perempuan Disiksa?," *Jurnal Perempuan* 1 (1996).

²⁴ A. A. Batubara, "Peran Polisi Dalam Penanggulangan Tindak Pidana Kekerasan Dalam Rumah Tangga" (Universitas Medan Area, 2011).

²⁵ G. M. Putri, "Pemberian Bantuan Hukum Kepada Korban Tindak Pidana Kekerasan Dalam Rumah Tangga Pada Pemeriksaan Di Kepolisian" (UAJY, 2019).

²⁶ R. Mansyur, "Tindak Pidana Kekerasan Dalam Rumah Tangga Menurut Sistem Peradilan Pidana Dalam Perspektif Restorative Justice," *Jurnal Hukum Dan Peradilan* 5, no. 3 (2016).

²⁷ L. A. Sholihat, "Konfirmasi Empat Faktor Yang Berpengaruh Terhadap Pemberdayaan Perempuan Korban Kekerasan Dalam Rumah Tangga," *Jurnal Kesehatan Bakti Tunas Husada: Jurnal Ilmu-Ilmu Keperawatan, Analisis Kesehatan Dan Farmasi* 18, no. 2 (2018).

²⁸ A. B. Santoso, "Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Perempuan: Perspektif Pekerjaan Sosial," *Komunitas* 10, no. 1 (2019).

Article 45 of Law Number 23 of 2004 stipulates that investigations, prosecutions, examinations in court trials are carried out according to the provisions of the applicable criminal procedural law unless otherwise stipulated in this law. Therefore, in the trial process for criminal acts of domestic violence, the judge will refer to the Criminal Procedure Code and it is processed like any other general crime. The increase in cases of domestic violence during the covid pandemic is quite worrying in which the victims must immediately get help, on the other hand health protocols must be implemented to anticipate the possibility of spreading the virus.

3.3. Restorative Justice in Resolving Domestic Violence

Domestic violence forms an inherited cycle of violence. Violence in principle is carried out by people who have greater power to those who have weaker powers. For example, when a husband commits violence against his wife, the wife tends to commit violence against children. Criminologist Larry J. Siegel states “children who grew up in homes wracked by conflict, attended inadequate schools, or associated with deviant peers became exposed to forces that engendered crime.”²⁹ Children who are in a conflict-ridden family environment, without optimal education and supervision from school or in an environment of friends who behave deviantly tend to cause crime. Exposure to violence in childhood can cause girls to normalize violence. In addition, women's lack of income and low levels of education can lead to an approach that accepts violence because of powerlessness. Accepting violence can also form a vicious circle to continue violence.³⁰ Seeing this vulnerability, the criminal justice system should as much as possible have a legal mechanism to stop domestic violence.

One application for legal reform in the settlement of criminal cases of domestic violence is to use a Restorative Justice approach. The consultative nature of the completion of the Restorative Justice approach is manifested in a dialogue between the parties known as “musyawarah and mufakat”. Domestic violence is a crime. Acts of domestic violence that lead to criminal acts have different forms and characteristics, so that judges in deciding cases related to criminal acts of domestic violence also have different legal considerations. Perpetrators and victims of domestic violence are people who have an inner bond that is created in a relationship that is basically love. This causes the legal process in this case cannot be equated with other cases. Victims of violence initially reported the perpetrator's actions to the police so that the legal process proceeded.

As the legal process progresses, the emotions and communication between the perpetrator and the victim gradually improve, so that the victim begins to forgive the perpetrator's mistakes. Likewise, the perpetrator regrets his actions to the victim. The

²⁹ Siegel, *Fourth Edition Criminology The Core*.

³⁰ E.K. Almis, B.H.; Gumustas, F.; & Kutuk, “Effects of Domestic Violence Against Women on Mental Health of Women and Children,” *Psikiyatrike Guncel Yaklasmlar-Current Approaches in Psychiatry* 12, no. 2 (2020): 232–42.

basis of the affection and emotional bond between the perpetrator and the victim is what causes the victim to request that the legal process be stopped while the time for revocation of the report has passed the grace period permitted by law. This is in line with what was conveyed by social worker, Anna Sakreti Nawangsari, who revealed a fairly complicated obstacle in the process of handling cases of domestic violence, namely the occurrence of an endless cycle of violence. This cycle starts from the phase when violence occurs, the couple apologizes, the honeymoon phase or calm period, tensions conflict occurs, and returns to the violence phase. This cycle is difficult to stop because of personal relationships with partners such as love, affection, and pity. This makes the chain of domestic violence difficult to break.³¹

In the principle of criminal law, basically there is no problem solving out of court through mediation. Currently the only law regarding criminal acts whose settlement can be done through an out-of-court settlement mechanism is Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, although the settlement of cases with restorative justice has been regulated in various policy regulations. In the juvenile criminal justice system, this is known as diversion. Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside of criminal justice based on restorative justice.

Law Number 23 of 2004 has accommodated the idea of restorative justice. The concept of a restorative justice approach is an approach that focuses more on the conditions for creating justice and balance for perpetrators of criminal acts, including perpetrators of domestic violence to their own victims. So that the procedural and criminal justice mechanisms that focus on sentencing are transformed into a dialogue and mediation process to create an agreement on a more just and balanced settlement of criminal cases for the victims and perpetrators. One way that can be used in a restorative justice approach to domestic violence is the restorative model of penal mediation. Integrating penal mediation in the criminal justice system is not easy. It is important to socialize beforehand about penal mediation to the community. Penal mediation which is aspired to as an effort to avoid punishment should not turn back to burden the criminal justice system so that it requires careful regulation taking into account various aspects needed, such as the category and level of domestic violence which can be resolved through penal mediation that adheres to the principles of restorative justice.

Restorative Justice is an approach to justice that focuses on the needs of victims and perpetrators of crime. The main objective of Restorative Justice is the achievement of justice as fair as possible for all parties involved in it, not just prioritizing punishment. The principle in Restorative Justice is the settlement of violations of the law that occur

³¹ Eka Wahyu Pramita, "Waspada Kasus Kekerasan Dan KDRT Tersembunyi Selama Pandemi," 2020.

by bringing victims and perpetrators to sit together which focuses on the pattern of mediation, not to carry out the principle of punishing the perpetrators. The implementation of Restorative Justice in acts of domestic violence, especially during the COVID-19 pandemic, is in line with the consolidation goal of the Law on the Elimination of Domestic Violence, namely to maintain a harmonious and prosperous household. The Law on the Elimination of Domestic Violence has brought cases that are in the private sphere between husband and wife into the public sphere, and expanded the scope of the household not only to physical violence between husband and wife but to all family members in the household which includes psychological violence, domestic neglect and sexual violence. There are three principles in the implementation of Restorative Justice, namely 1) The aspired justice is an effort to restore for the injured party; 2) Anyone who is involved and affected by a criminal act must have the opportunity to fully participate in following it up; 3) The government plays a role in creating public order, while the community builds and maintains it.³²

In the Law on the Elimination of Domestic Violence, there is no loophole to use penal mediation in an effort to solve problems. Resolution of problems through penal mediation can only be found in the Juvenile Criminal Justice System Act. The opportunity to apply penal mediation in cases of domestic violence is in the realm of the police. In which before the case is transferred to the prosecutor's office and then goes to court, the police have the opportunity to open a mediation space between the victim and the complainant. The consideration of the police for resolving cases without being submitted to court is the hope of the community that focuses not on the law enforcement, but on the values of peace and tranquility in society, the tendency to solve problems with punishment will not necessarily solve the problem, but on the contrary will widen of conflict and displeasure that lead to ongoing grudges, and sometimes the cases that are complained do not have a legal basis to be legally resolved.³³

Mediation in criminal acts was initially considered an aberration, but the needs in society require the settlement of legal problems that can be resolved amicably without being entirely resolved by punishment. Filling the needs of the community, mediation is chosen because the parties could reveal the facts to each other and put forward a greater interest, especially the integrity of the household. In mediation, both parties can compromise without any pressure from the other party. Settlement through mediation is also considered to be faster, cheaper and the results will give satisfaction to the parties.

The type of violence that can be mediated is important to formulate, as it is known in the law on the elimination of domestic violence, there are 4 types of violence, namely

³² N. Arief, H.; & Ambarsari, "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia," *Al-Adl: Jurnal Hukum* 10, no. 2 (2018): 173–90.

³³ E.K.M. Masinambow, *Bunga Rampai Hukum Dan Kemajemukan Budaya* (Jakarta: Yayasan Obor Indonesia, 2003).

physical, psychological, sexual violence and neglect of the household. The category of violence that can be mediated should be seen from the severity of the consequences resulting from these actions which have been regulated by law. Firmness regarding the types of violence that can be resolved by penal mediation has not yet been clearly regulated. It is important to emphasize this; therefore, penal mediation can be carried out on target in effective and efficient way.

Penal mediation, which is influenced by the principles of Restorative Justice, has two penal mediation models, namely the judicial model and the restorative model. The two models have quite principal differences. The judicial model is usually applied in the justice system in which the mediator is usually a legal expert who does not have special education in the field of mediation.³⁴ The restorative model is a penal mediation model that is more respectful of mediation ethics, in which the mediator is generally a psychologist who has received mediation training. In this mediation, what is taken into consideration is what the parties say is not based on legal documents, with an emphasis on communication, the mediator only acts as a listener who helps formulate the goals and efforts to resolve the problem desired by the parties without directing one to another destination point.³⁵ Of the two penal mediation models, the one that is appropriate to be applied in solving the problem of domestic violence is the restorative model of mediation. Considering the problem of domestic violence usually occurs in a closed room so it is difficult to get witnesses and legal evidence. Moreover, the form of violence that is carried out is psychological violence so that it is invisible to the naked eye. With the penal restorative model of mediation, the parties get the opportunity to talk from heart to heart to express what they feel, the mediator also does not direct but only listens so that no third party will dictate and put pressure on both the perpetrator and the victim.

The stages in penal mediation are not much different from mediation in civil law, the consideration is at which stage the mediation is carried out, whether at the stage of investigation, prosecution or trial. Mediation can occur if the parties agree to mediate and understand the main issues that occur and why mediation must be carried out. Without these conditions, mediation will not occur. Successful mediation will result in a settlement agreement that is binding on the parties. The successful penal mediation in the police provides two possibilities in which the complainant or victim withdraws his complaint by agreement based on the mediation opportunity provided by the police or the results of the mediation can be taken into consideration by the judge in making a decision. The judge's decision in penal mediation is important; therefore, the results of the mediation have the legal force and are carried out as agreed. Regarding the period of time for penal mediation,

³⁴ S. Lasmadi, "Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia," *INOVATIF/ Jurnal Ilmu Hukum* 4, no. 5 (2011).

³⁵ F. M. Nelson Nelson, "Due Process Model Dan Restorative Justice Di Indonesia: Suatu Telaah Konseptual," *Jurnal Hukum Pidana Dan Kriminologi* 1, no. 1 (2020).

it must be determined based on the expiration of cases of domestic violence and the length of the mediation process. It is important to include a time limit on the implementation of the penal mediation so that this mediation process does not drag on.

The law on the elimination of domestic violence has accommodated the idea of restorative justice, but the context of restorative justice is not placed in the context of resolving criminal acts using criminal law or criminal law policies. Indications that restorative justice has not been reflected in criminal law policies that refer to overcoming domestic violence can be seen from: a. the process and procedure for resolving cases of domestic violence basically do not involve the victim actively in the case settlement process, b. In the Criminal Code and the Law on the Elimination of Domestic Violence, it has not been regulated regarding criminal witnesses who are restorative, c. Criminal law policies in domestic violence crimes that contain the idea of restorative justice are formulated by formulating material criminal law policies and formal criminal law policies.

4. CONCLUSION

The Covid-19 pandemic is a "strain" that causes cases of domestic violence to increase. The handling of domestic violence in the Covid-19 pandemic situation with general conditions does not have a significant difference, economic factors are the main factor in increasing the occurrence of domestic violence during the pandemic. This violence can occur in the form of physical, psychological, sexual and verbal violence as well as neglect in the household. The dominant victims of domestic violence are wives or women. Factors that encourage acts of violence against wives in the household are the dominant defense against men, discrimination, patrilineal culture that burdens wives as housekeepers, and restrictions on economic activities to wives (bans work on wives). The impacts that occur due to domestic violence include: impact on reproductive health, especially due to sexual violence that occurs in the household, psychological impacts that affect psychology on the mother, resulting in disturbances in pregnancy, miscarriage and maternal death during childbirth. The presence of Law Number 23 of 2004 concerning the Elimination of Domestic Violence shifted the area of private issues into public problems. This condition can weaken the restorative justice approach in resolving cases of domestic violence. This cannot be separated from the legal culture of the community which considers husband and wife problems as a big family problem, so reporting a spouse to the police is an insult to a large family. It will worsen the condition of the household.

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